In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.3337 of 2004.

Date of decision:19.10.2006.

Hardam Singh.

...Appellant.

Versus

The State of Haryana and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.L.N.Verma Advocate for the appellant.

Mr.Deepak Kaushal, Additional AG Haryana for the respondents.

...

Judgment.

S. N. Aggarwal, J.

Hardam Singh appellant was cultivating the suit land for the last 40/42 years as a lessee. The suit land was owned by the respondents. Apprehending his dispossession, Hardam Singh filed Civil Writ Petition No.8015 of 1994 in this Court. This Court vide detailed order dated 15.12.1994 protected the possession of the appellant and he was directed to pay Rs.10,000/- per year as lease money for whole of the suit land on certain conditions. One of the conditions was that the respondents were entitled to enhance the lease

money after taking into consideration lease rates in the vicinity and after hearing the appellant. However, the respondents vide order dated 7.3.2001 enhanced the rate of lease money with effect from 1997-98. Accordingly, the appellant filed a civil suit challenging the said order.

The respondents filed written statement and contested the suit. Their version was that the appellant was in unauthorised possession of the suit land. Accordingly, proceedings were initiated against him under the Public Premises Act and an order of ejectment was passed against the appellant on 18.6.1993 in pursuance of which the appellant was ejected from the suit land. His appeal was also dismissed by the Commissioner on 15.10.1993 on which the appellant filed writ petition in this Court which was accepted by this Court vide order dated 15.12.1994. It was pleaded that the lease money was fixed at the rate of Rs.10,000/- per year but the respondents have the right to enhance the same keeping in view the rates prevalent for such land in the vicinity and after giving the appellant benefit of his possession.

It was further pleaded that the respondents had sent notice dated 12.2.2001 to the appellant for enhancing lease money and the appellant was given one week time to file his objections. The Halqa Patwari had served the notice on the appellant in the presence of the Lambardar of the village but the appellant had refused to receive the said notice and thereafter he was served by Munadi. The order for enhancing lease money was sent to the appellant on 7.3.2001 but the appellant refused to acknowledge it. The respondents have verified the

rates of lease money of village Moujgarh from the Sarpanch for the year 1996-97 to 2000-2001. Benefit to the tune of 10% of the possession of the appellant was also given to him and after deduction of benefit of possession, an amount of Rs.1,28,619/- was found outstanding against him. The appellant had deposited a sum of Rs.40,000/- at the rate of Rs.10,000/- per year. Hence, it was prayed that the impugned order has been passed against the appellant in accordance with law.

Issues were framed.

The appellant appeared as PW-1. He also tendered documents, Exhibits P-1 to P-6.

On the other hand, the respondents examined Mool Chand, S.D.O, Mandi Dabwali, as DW-1.

After considering the evidence, the learned trial Court dismissed the suit vide judgment and decree dated 26.9.2003.

The appellant filed an appeal. The learned Lower Appellate Court up-held the findings of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 12.4.2004.

Hence, the present appeal.

The following substantial questions of law arise:-

(i) Can the respondents enhance the rate of lease money from back date?

(ii) Was the order for enhancement of lease money passed in accordance with the directions of the Hon'ble

High Court dated 15.12.1994 given in Civil Writ Petition No.8105 of 1994?

The learned counsel for the appellant drew the attention of this Court towards the conditions which were laid down by the Hon'ble High Court vide judgment dated 15.12.1994 passed in Civil Writ Petition No.8105 of 1994 by which the possession of the appellant was regularised and he was directed to pay lease money at the rate of Rs.10,000/- per year. The conditions imposed by this Court are reproduced hereunder:-

i) That the petitioner shall be deemed to be a perpetual lessee and not liable to eviction unless the property is required for any public purpose and he continues to abide by the directions contained in this order.

ii) That the petitioner shall pay the amount of Rs.20,834/- being the penalty imposed by the Collector, Dabwali,vide order dated 17.6.93 which shall be deemed to be lease money upto the year 1993. Any amount paid by the petitioner on this account shall be adjustable.

iii) That from the year 1994 onwards, the petitioner shall pay lease money at the rate of Rs.10,000/- per year for the whole of the land which is subject matter of the dispute.

iv) That the respondent shall be at liberty to enhance the lease money after the year 1997.

v) That enhancement of the lease money shall be arrived

at after notice upon the petitioner and keeping in view the rates prevalent for such leases in the vicinity and after giving the petitioner the benefit of his possession.

vi) That in case the petitioner fails to pay the lease money for any year, the respondents shall be entitled to dispossess him from the land in dispute and in that eventuality he shall be deemed to be unauthorised occupant."

The submission of learned counsel for the appellant was that the respondents had the right to enhance the lease money after the year 1997 but they could do so (i) after notice to the appellant (ii) keeping in view the rates prevalent for such leases in the vicinity and (iii) after giving the appellant the benefit of his possession. It was submitted the impugned order dated 7.3.2001 has been passed by which all the three conditions have not been observed and,therefore, the said order was invalid and illegal.

On the other hand, the respondents have placed on the file notice dated 12.2.2001 (Exhibit D3 in the learned trial Court). This was a letter sent by Sub Divisional Canal Officer, Dabwali Water Services Sub Division, Khuiyan Malkana to the Ziledar Khuiyan by which the Ziledar was required to serve notice on Hardam Singh appellant as to why the rates of lease money be not increased equivalent to rates prevalent in village Moujgarh after giving him 10% concession in lieu of his previous possession. He was also required to call upon Hardam

Singh appellant to file any objections within one week otherwise the rates would be increased as proposed. This notice was to be served on the appellant. The Ziledar sent the notice to Mithu Ram Patwari to serve the same and the Patwari reported back that Hardam Singh appellant was informed but he refused to put his signatures on the notice in token of having received the information. The said report of the Patwari was endorsed by Hanuman Lambardar of village Moujgarh. The Chowkidar reported that Hardam Singh has been served by beat of drum and the Chowkidar also signed on the report in token thereof. The summons were thereafter returned to the authority concerned.

The submission of the learned State counsel was that proper notice was served on the appellant. He was given due opportunity to file objections but no objections were filed by the appellant. It was also submitted that the rates of lease money in the vicinity were kept in view and the appellant was given the concession of 10% for his previous possession. This was so done as per directions of the Hon'ble High Court vide order dated 15.12.1994 passed in Civil Writ Petition No.8105 of 1994.

The submission of the learned counsel for the appellant was that neither the Patwari has been examined nor the Ziledar has been examined nor the Chowkidar has been examined. Therefore, the service of the appellant is not proved.

This submission has been considered. It is found to be without any merit. The respondents had no bias against the appellant.

Letter was sent by the Sub Divisional Canal Officer to the Ziledar. The Ziledar had marked it to the Patwari. The Patwari had gone to Hardam Singh appellant personally and had informed him about this notice in the presence of Hanuman Lambardar of village Moujgarh. After the refusal by Hardam Singh appellant to put his signatures, he was served by beat of drum by Ruldu Singh Chowkidar. This document has been proved by Mool Chand, Sub Divisional Canal Officer who appeared as DW1. All this was done in the performance of official duty and presumption can be raised under the provisions of Indian Evidence Act that official acts are performed in accordance with law unless proved to the contrary. The appellant has not examined the Patwari to say that no such notice was served on the appellant nor he has examined Hanuman Lambardar of his village to say that no notice was served on the appellant in his presence nor he has examined the village Chowkidar to say that the appellant was not served by beat of drum. Therefore, there is probative value of evidence in favour of the respondents that the notice was served on the appellant. Moreover, these documents have been exhibited by Mool Chand, Sub Divisional Canal Officer while appearing as a witness in the witness box and he was duly cross-examined by the appellant.

The submission of learned counsel for the appellant was that merely because this document has been exhibited, it does not become a piece of evidence unless proved in accordance with law and procedure.

This submission has no merits at all. As has been discussed above, this notice was served on the appellant in the performance of official duties by the village Patwari and the village Chowkidar served the appellant by beat of drum and these are presumed to be correct till proved to the contrary.

It was further submitted by the learned counsel for the appellant that the rate could be enhanced only after finding out the rate of lease money prevalent in the vicinity. It has been proved by the respondents that enquiries were made from village Sarpanch who has informed about the rates of lease money and notice was served on the appellant in accordance with the said enquiries. Therefore, this condition laid down by the Hon'ble High Court in the order dated 15.12.1994 has been complied with.

The submission of learned counsel for the appellant was that the Sarpanch has not been examined as a witness. However, the non-examination of Sarpanch is not material when it has been deposed by Mool Chand, Sub Divisional Canal Officer that enquiries were made by him from the Sarpanch and the notice was served on the appellant accordingly. It was for the appellant to contradict the evidence led by the respondents either by examining village Sarpanch to show that no such enquiry was made from him or by examining any other witness to show that the rates of lease money prevalent in the vicinity are much less than the rates proposed but no such witness has been examined by the appellant to contradict the evidence led by the respondents.

Therefore, it is held that the rates of lease money fixed by the respondents are in accordance with the rates of lease money prevalent in the vicinity and this condition of the order dated 15.12.1994 has also been complied with.

Admittedly, 10% concession has been given to the appellant for his past possession and this also shows that the condition laid down by the Hon'ble High Court in the order dated 15.12.1994 has been complied with.

When the appellant was served with the notice and he failed to file objections then the order dated 7.3.2001 was passed by the respondents by which the rates of lease money were enhanced with effect from 1997 onwards. It is, therefore, held that enhancement in the rate of lease money has been made by the respondents in accordance with the judgment of this Court dated 15.12.1994 passed in Civil Writ Petition No.8105 of 1994.

However, the respondents have increased the rates of lease money with effect from 1997-98 vide order dated 7.3.2001. Notice was served by them only on 12.2.2001 and not earlier to that. Therefore, the rate of lease money could be enhanced only after the notice was given by the respondents to the appellant. The rates could not have been enhanced with effect from the back date and any enhancement of rate of lease money from the proposed date would be violative of order dated 15.12.1994 passed by this Court in Civil Writ Petition No.8105 of 1994.

Therefore, questions of law are answered as under:-

The respondents are not entitled to recover the arrears of enhanced lease money from 1997-98 till 7.3.2001 on which date the order was passed after giving due notice to the appellant. So far as the second question is concerned, all the necessary conditions were complied with by the respondents while enhancing the rate of lease money i.e. notice was served on the appellant. The rates of lease money prevalent in the vicinity were kept in view and the appellant was given benefit of his past possession.

Accordingly, this appeal is partly accepted to the extent that the respondents are debarred from claiming arrears of enhanced lease money from the year 1997-98 till 21.3.2001. They would be entitled to the enhanced lease money after the date of order passed on 7.3.2001. The amount of Rs.40,000/- paid by the appellant shall be adjusted against the outstanding lease money, accordingly.

October 19,2006. (S. N. Aggarwal)
Jaggi Judge